



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
ATTORNEY GENERAL

August 22, 1960

Honorable Jimmy Morris  
County Attorney  
Navarro County  
Corsicana, Texas

Opinion No. WW-910

Re: Does Article 2135,  
Vernon's Civil Stat-  
utes, relating to  
jury service apply to  
members of the Grand  
Jury Panel?

Dear Mr. Morris:

In your letter requesting an opinion from this office you ask whether Article 2135, Vernon's Civil Statutes, as amended, applies to members of the Grand Jury Panel.

You state in your letter that:

"No where in the Code of Criminal Procedure is there a provision for excuses for members of the Grand Jury Panel. . . ."

Article 339, Vernon's Code of Criminal Procedure, sets out the qualifications of a grand juror. Article 352 of the Code of Criminal Procedure provides that the court shall proceed to test the qualifications of those summoned to serve as grand jurors. Article 356 provides that the court may excuse those persons summoned who do not possess the necessary qualifications.

Under Article 356, Vernon's Code of Criminal Procedure, it has been held that a court may excuse from service on the grand jury citizens whose reasons as presented to the court appeal to his sound discretion and are such as to justify his action. Robinson v. State, 244 S.W. 599 (Tex. Crim. 1912).

Article 2135, Vernon's Civil Statutes, applies to exemptions and not to excuses. It provides in part that:

"All competent jurors are liable to jury service, except the following persons:  
. . . ."

Then follows a list of those persons who are exempt from jury service.

It is well settled that those persons exempt from jury service under Article 2135, Vernon's Civil Statutes, are not disqualified from grand jury service, but that the exemption is a personal privilege to be claimed or waived by them, and that it is only when they claim their exemption that they are entitled to be released from grand jury service. Owens v. State, 8 S.W. 658 (Tex. Ct. App. 1888); Edgar v. State, 127 S.W. 1053 (Tex. Crim. 1910); 20-B Tex. Jur. 538, Grand Jury, Section 12.

Section 3, 39 Tex. Jur. "Statutes," p. 12, reads in part as follows:

" . . . Nor is it necessarily essential that a given provision be placed in a particular code in order that it may be effective; on the contrary an article of the Penal Code may impose a civil duty, or the Civil Statutes may contain provisions governing the trial of both civil and criminal cases. . . ."

Further, Article 336 of the Code of Criminal Procedure states in part:

" . . . The clerk shall furnish . . . the names of those appearing from the records of the court to be exempt or disqualified from serving on the jury . . ." (Emphasis added)

Inasmuch as the word exempt was used in the above statute and is not mentioned further in the Code of Criminal Procedure, and in view of the other statutes and cases cited above, it is the opinion of this office that Article 2135, Vernon's Civil Statutes, does apply to members of a grand jury panel.

#### SUMMARY


Under Article 356, Vernon's Code of Criminal Procedure, a court may excuse from grand jury service citizens whose reasons appeal to his sound discretion. Those persons classified as exempt under Article 2135, Vernon's Civil

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Statutes, are entitled to be released from  
grand jury service if they claim their exemp-  
tion.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
Martha Joe Stroud  
Assistant

MJS:mm:ms

APPROVED:

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